

1 that does a disciplinary action should go before the  
2 Personnel Review Board unless it's -- maybe they've  
3 got a grievance that they had a oral reprimand or  
4 something of that nature, then I might get a  
5 grievance like that.

6 Q. Let me invite your attention to Exhibit 3,  
7 which appears to be excerpts from the city's Merit  
8 System's rules and regulations. Section 15.02 says  
9 as follows: Quote, disciplinary actions,  
10 dismissals, demotions, suspensions, fines,  
11 reductions in pay, position classifications, and  
12 allocations shall not be subject to review as  
13 grievances, end quote. Do you see where it says  
14 that?

15 A. I do.

16 Q. Is that an accurate statement?

17 A. It is. It is.

18 Q. So in the case of Mr. Davis and his  
19 dismissal, he would not have been able to file any  
20 kind of a grievance seeking review, would he?

21 A. To me, no.

22 Q. But to the Personnel Board yes?

23 A. That's correct.

24 Q. Is that considered a grievance or an  
25 appeal? Maybe I'm being too technical.

1           A. I would think it would be an appeal rather  
2 than a grievance. An appeal of decision of the  
3 department head.

4           Q. Okay. All right. Mr. Roberts, with regard  
5 to David Davis, are you aware that he worked for  
6 about eight years in the Phenix City Fire  
7 Department?

8           A. I am.

9           Q. And are you aware that he was first  
10 employed in April of 1998 in the city fire  
11 department?

12          A. I know the approximate hire date.

13          Q. And are you aware that Mr. Davis was  
14 eventually promoted to the rank of sergeant in the  
15 city fire department?

16          A. I am.

17          Q. As city manager, do you have the authority  
18 or responsibility to review proposed promotions like  
19 in the fire department?

20          A. I do. But as I stated earlier, that's  
21 pretty much left up to the department heads or  
22 chiefs. I don't get into the business of promotions  
23 or anything like that within their areas of  
24 responsibility.

25          Q. Do you get into employment evaluations of

1 their job performance like a firefighter in the city  
2 fire department?

3 A. I will sign the total evaluation, the  
4 yearly evaluations. But if you're asking me do I  
5 read each and every one of them, no, sir, I do not.  
6 I think that again is, of course, the first line  
7 supervisor, the district chief -- or, in this case,  
8 the chief. It's according to how they've got it set  
9 up on who evaluates who and what -- in the rank  
10 structure.

11 Q. I'm sorry. Did you say you would sign the  
12 evaluations?

13 A. I think at the bottom of the evaluation  
14 form, there's a signature block that I sign and I  
15 think that's primarily for pay purposes anyway. But  
16 I sign a lot of them every year, it appears.

17 Q. Let me show you -- I guess we can identify  
18 this as Exhibit 34. And I don't have it in the  
19 binder, sir, because I just got it this morning, at  
20 least an additional copy. And this appears to be a  
21 Performance Appraisal by the city fire department of  
22 David Davis for the evaluation year 2003 to 2004.  
23 And it does look like you have -- well, no, I don't  
24 think you have. You weren't city manager then, were  
25 you?

1 A. No, sir. I was -- unfortunately, I was  
2 away.

3 Q. Well, there's -- somebody signed it there  
4 as city manager. Can you make out the name or the  
5 signature on that?

6 A. Max Wilkes.

7 Q. Was he the previous city manager?

8 A. He was my interim city manager. I  
9 appointed him as an interim when I was gone half a  
10 year.

11 Q. Let me invite your attention to  
12 Exhibit 18. And as you're looking at that, I want  
13 you to take as much time as you need, Mr. Roberts,  
14 to review these documents before you feel  
15 comfortable in answering my questions.

16 This is a memo from Roy Waters, Deputy Chief in  
17 the city's fire department, to Wallace Hunter, the  
18 fire chief, dated February 6, 2006, concerning the  
19 subject of, quote, letter to Mr. H.H. Roberts, end  
20 quote. You see where it says that?

21 A. I do, yes, sir.

22 Q. Have you seen this document before today?

23 A. Yes, sir. I read this memo.

24 Q. You do what?

25 A. I've read the memo.



1 Q. Okay. I want to invite your attention to  
2 the last sentence at the bottom of the memo where it  
3 says, quote -- and this is Deputy Chief Waters  
4 addressing Mr. Hunter -- quote, as I have  
5 communicated to you on several occasions, David  
6 Davis is doing an outstanding job for me and has a  
7 very positive and professional attitude, end quote.  
8 Do you see where it says that?

9 A. I do.

10 Q. As far as you know, sir, as the city  
11 manager, is that a fair and accurate statement  
12 concerning Mr. Davis and his job performance as a  
13 sergeant?

14 A. As not being a first line supervisor  
15 knowing his day-to-day activities, I would accept  
16 the fact that the chief made an evaluation of him  
17 and I would not disagree with it.

18 Q. So you don't have any information or facts  
19 as the city manager to disagree with that statement  
20 within the fire department that Davis is doing an  
21 outstanding job and has a very positive and  
22 professional attitude?

23 A. I wouldn't have any day-to-day knowledge of  
24 that, no.

25 Q. When you were coming up for consideration

1 to be appointed as city manager, do you know if the  
2 firefighters' local labor organization took a  
3 position that you should be city manager or took a  
4 position that you should not be city manager?

5 A. Sir, when I was appointed city manager in  
6 2002, it was on a interim basis for 2001 by a prior  
7 administration. And I was not here when the  
8 appointments were made at this time. I already held  
9 the position. And I assumed that by federal laws I  
10 would have had my job back anyway when I returned.  
11 So I do not know anything about any of that.

12 Q. Okay. So you don't know whether or not the  
13 firefighters' labor association --

14 A. No, sir, I do not.

15 Q. -- supported your appointment as city  
16 manager?

17 A. I do not. And when I say that, I don't  
18 know whether they did or whether they didn't.

19 Q. Right. Now, I think you started to  
20 indicate earlier that there was at least one  
21 occasion, perhaps more, where you met with the  
22 firefighters' local union and perhaps a  
23 representative of the International Association of  
24 Firefighters?

25 A. We met in this office here. I never went

1 to a local meeting. And I -- I think his name is  
2 Malone was the first gentleman that came down here.  
3 Basically, he talked with me and Mr. Davis about  
4 some complaints that Mr. Davis -- or let me not say  
5 Mr. Davis per se -- let me say the local union had  
6 concerning staffing, morale, equipment, and things  
7 of that nature.

8 At that time, I pretty much was emphatic that  
9 Sergeant Davis should go to his fire chief and  
10 discuss those issues with him, which was at that  
11 time Chief Prater. They had that meeting.  
12 Basically, I don't think it was a good outcome.

13 Q. Okay. Before we get to the follow-up  
14 meeting, let's go back to the earlier meeting that  
15 you say you had in this building with Mr. Davis and  
16 Mr. Malone from the IAFF.

17 A. And I may add, I believe Mr. Dennis Duty  
18 was still the president of the local at that time  
19 and was in attendance as well. And my memory may  
20 not be that well, you know, but I do think there was  
21 more than just Sergeant Davis, myself, and Malone.

22 Q. Do you know at that time if Mr. Davis was a  
23 vice-president of the local firefighters' union?

24 A. I would have to say I did. I mean, that  
25 would make sense.

1 Q. And, I guess, did they call you up ahead of  
2 time and say, Mr. Roberts --

3 A. Yes, sir, they did.

4 Q. -- we would like to come over, have a  
5 meeting?

6 A. Yes, sir.

7 Q. You agreed and scheduled the meeting, then  
8 came and you sat here; is that correct?

9 A. That's right.

10 Q. Did they give you any documents at that  
11 time, any proposals? Or was it just --

12 A. Yes, sir. I'm going to use the word  
13 laundry list, because that's basically what it was,  
14 some things that they felt needed to be addressed  
15 within the fire department.

16 Q. And roughly how long was the meeting?

17 A. Probably less than an hour. Right around  
18 an hour.

19 Q. Okay. And how did the meeting end up as  
20 you recall?

21 A. I thought it was on a pretty positive note.

22 Q. Did they raise some issues that you thought  
23 should be addressed and resolved?

24 A. And I believe that the issues they brought  
25 up have been addressed and some are still pending.



1 Q. Can you remember, as an example, some of  
2 the issues that they raised in this meeting that you  
3 felt were legitimate and should be looked into and  
4 addressed?

5 A. Well, there's been a couple of things  
6 that's been brought up. The 8-hour shifts for one.  
7 I have personally felt that a 8-hour shift or a  
8 12-hour shift or Panama shift may have worked better  
9 than a 24-hour shift. Some fire departments do  
10 that. After research and finding out, we found that  
11 we were wrong on an 8-hour shift. Had nothing to do  
12 with anything else.

13 Then I looked at a 12-hour Panama shift like  
14 they have some of these police officers work. That  
15 probably would not work as well as what we've got  
16 now, so we chose to keep the shift structure as it  
17 is now. So I felt like that portion of their agenda  
18 was addressed.

19 Q. Okay. Anything else that you can remember,  
20 issues they raised that you --

21 A. Equipment. I think that -- the equipment  
22 issue or the safety problems.

23 Q. Safety of the firefighters you mean?

24 A. Yes. I'm talking about the breathing  
25 apparatuses and vehicles themselves, the fire

1 apparatus themselves. I think we have moved  
2 forward, and both -- Chief Hunter especially is down  
3 here constantly looking for ways to buy equipment  
4 and added resources for these firefighters not only  
5 to, you know, fight a fire, but also in the training  
6 process, which is a daily ongoing item. And I think  
7 we have addressed those needs.

8 Q. Okay. So I'm clear on this, in this  
9 meeting that you had with Mr. Malone from the IAFF,  
10 and Mr. Duty and Mr. Davis from the local labor  
11 association of firefighters, you recall that one of  
12 the items that they addressed with you at that  
13 meeting involved fire equipment on the subject of  
14 safety of the firefighters and, in particular, I  
15 guess you recall their expressing concerns about the  
16 self contained breathing apparatus; is that correct?

17 A. That's correct.

18 Q. Anything else that you can remember off the  
19 top of your head of the issues they raised of  
20 concern?

21 A. A separate meeting came about that dealt  
22 with their swap time. And Chief Prater came to me  
23 shortly after I returned from active duty concerning  
24 swap time. The swap time was removed. The problem  
25 we were having with swap time was more of an

1 accounting/insurance issue than anything more so.

2 For instance, we had one firefighter -- and I  
3 do not remember his name -- was injured or was sick  
4 when he was actually pulling swap time for someone  
5 else and workers' comp wouldn't pay the claim. So,  
6 you know, we had to work some procedures out. And  
7 Chief Hunter aggressively worked on that ever since  
8 he was appointed chief. And when Assistant Chief  
9 Waters came on board, they, along with the personnel  
10 director and the insurance side of the house, felt  
11 that they had it in line to where we could put the  
12 swap time back in.

13 Q. Okay. Any other issues or have I exhausted  
14 your memory that were raised by Davis, Duty, and  
15 Malone at your meeting?

16 A. The staffing issue.

17 Q. What was that about that they raised?

18 A. You know, everybody would like to go by  
19 NFPA standards of -- what is it -- 2010 or 2008?  
20 Whichever it is.

21 Q. 1710.

22 A. It's 1710, 1708.

23 Q. Two in, two out policy?

24 A. Sir?

25 Q. Two in, two out policy?

1           A. Yes, sir. However, most cities -- city  
2 governments and most managers in these United States  
3 are against it. And if you talk about it in a city  
4 managers' meeting, you see that they're not against  
5 it, per se, for fire safety; it's the cost that it  
6 costs the city to go into it. We cannot afford  
7 staffing like that.

8           But we have increased staffing, and I think  
9 that that's one of the main things. Not only the  
10 fire department. We have increased staffing in the  
11 police department as well. So, you know, I try to  
12 keep a equal balance between those two. So I do  
13 think we have tried to address those issues.

14          Q. That was an issue that was also raised by  
15 Mr. Davis, Mr. Duty, and Mr. Malone with you at the  
16 meeting?

17          A. That's right.

18          Q. Any other issues that you haven't already  
19 mentioned that they raised at that meeting?

20          A. Morale. But I don't -- I think morale  
21 right now is going real good. It appears to be.

22          Q. But they raised the concerns?

23          A. They talked about morale. You know, as a  
24 manager, you know, you can talk to your department  
25 heads. But, you know, your morale in a group of



1 men, whether it be, you know, with a infantry firing  
2 squad or whether it be with a fire department, any  
3 paramilitary organization, your front line  
4 supervisors control. They control the morale of the  
5 men.

6 And, usually, morale is high when you have good  
7 intensive training and they're occupied. And it's  
8 not necessarily that you give them everything they  
9 want to keep good morale, but you give them the  
10 necessary tools to do their job. And I think that  
11 that portion has been addressed now. That's about  
12 all that I know.

13 (Mr. McKoon entered the deposition room.)

14 Q. But you do recall that Davis and Duty and  
15 Mr. Malone raised the issue of employee morale in  
16 the fire department at this meeting that you have  
17 been describing?

18 A. I do.

19 Q. We've talked about five or six items that  
20 they raised. Anything else you can remember they  
21 addressed at the meeting?

22 A. Not off the top of my head, I can't.

23 Q. Fair enough. And was it your  
24 understanding -- you may have testified to this  
25 already -- that those three gentlemen -- Davis, Duty

1 and Mr. Malone -- were wanting to meet with you to  
2 address these issues in their role as or in their  
3 capacity as labor association representatives?

4 A. Yes, sir. But I also believe this. It may  
5 be in their role, but I also know they are Phenix  
6 City Firefighters 24 hours a day, 7 days a week in  
7 my opinion.

8 Q. I'm sorry. I didn't understand what you  
9 mean.

10 A. I know they were wanting to address me as a  
11 labor organization, but I also know they are  
12 employees and employees as firefighters, which I  
13 think are 7-day-a-week, 24-hour-a-day jobs.

14 Q. Yes. Do you recall if Mr. Davis and  
15 Mr. Duty were on their shift schedule or off duty  
16 when they had the meeting with you?

17 A. I don't know about Mr. Davis, Sergeant  
18 Davis here. But I do know that Mr. Duty was not  
19 employed by the city at that time.

20 Q. At that time he was gone?

21 A. Yes, sir.

22 Q. Okay. Now either during or shortly after  
23 that meeting, particularly involving Mr. Davis, did  
24 you consider that he was violating the chain of  
25 command or the Merit System rules and regulations

1 when he asked to meet with you for that almost an  
2 hour meeting and address these issues?

3 A. Well, it went through Chief Prater and I  
4 agreed to it.

5 Q. So earlier he got permission, Mr. Davis  
6 did, to meet with you?

7 A. And I believe Chief Prater talked with me  
8 and then I believe Malone called me to get the  
9 proper sequence. I don't remember the exact  
10 sequence.

11 Q. Let me invite your attention --

12 A. But I did not ask the chief to come over  
13 here to the meeting.

14 Q. You did not?

15 A. No. But I think I instructed him, once we  
16 left here, to take their complaints to the chief. I  
17 felt like that was --

18 Q. Was there a reason why you did not --

19 THE REPORTER: Whoa, whoa, whoa. I didn't  
20 hear the end of your answer.

21 A. I felt like it was the chief's job, Chief  
22 Prater, to handle the complaint, see if he could  
23 handle it prior to it coming back to me.

24 Q. Did you give consideration to inviting  
25 Chief Prater to come over and participate in this

1 meeting that we've been describing?

2 A. I did, but I chose not to.

3 Q. Why was that?

4 A. I felt like I wanted to hear the complaint  
5 myself and keep an open view, so to speak.

6 Q. Keep a what?

7 A. An open view.

8 Q. Let me invite your attention, Mr. Roberts,  
9 to Exhibit 11 in front of you. This is a memorandum  
10 from David Davis in his capacity as vice-president  
11 at the time of Local 3668, the Phenix City  
12 Firefighters Association, dated January 25, 2005,  
13 and addressed to Chief Jerry Prater. Have you seen  
14 this document before today?

15 A. I have.

16 Q. Was this the so-called laundry list that  
17 you described earlier that was given to you either  
18 before or during the meeting you had with Davis,  
19 Duty, and Malone?

20 A. It is.

21 Q. Some of these issues you've already  
22 addressed. In your one-hour meeting, were they able  
23 to go right down each and every item and cover all  
24 of them?

25 A. I don't think they did. I think they went



1 over a synopsis of the group.

2 Q. And at the end of the meeting, did you  
3 suggest to these three gentlemen -- Davis, Duty and  
4 Malone -- that they follow up directly with Chief  
5 Prater?

6 A. I think I asked for Sergeant Davis to talk  
7 with Chief Prater.

8 Q. And were you contemplating at the time that  
9 Davis would talk to Chief Prater again in his  
10 capacity as a local union representative?

11 A. Either/or. It didn't matter to me which.  
12 I think either one of them, whether he be a local  
13 member or whether he be any other firefighter, if  
14 he's got some concerns, then I think he needs to  
15 bring it through the chain and let the chief handle  
16 it.

17 Q. Now, did you expect or instruct Mr. Davis  
18 to go to his immediate officer, perhaps his captain,  
19 and up the chain of command before he --

20 A. Not to my knowledge. I don't remember  
21 doing that.

22 Q. So you suggested Mr. Davis could go  
23 directly to Chief Prater?

24 A. I emphatically said that he needed to take  
25 this up with Chief Prater.

1 Q. Okay. Fair enough. Let me invite your  
2 attention to Exhibit 12, which appears to be a  
3 letter from Thomas Malone as a field service  
4 representative of the IAFF dated March 7, 2005,  
5 addressed to yourself. Do you recall having  
6 received this letter from Mr. Malone?

7 A. I do.

8 Q. And, again, like with all these documents,  
9 if you want to take a moment to completely read it,  
10 just let me know that you want to do that.

11 A. I would like to do that and brief myself.

12 Q. Sure.

13 MR. GRAHAM: Let's go off the record.

14 (Discussion held off the record.)

15 MR. WOODLEY: Back on the record.

16 Q. Exhibit 12, you've had a chance now, Mr.  
17 Roberts, to read to yourself this letter Mr. Malone  
18 sent to you on March 7, 2005; is that correct?

19 A. That's correct.

20 Q. And he's describing a meeting that  
21 apparently he and Davis had with Chief Prater; is  
22 that correct?

23 A. It's my understanding that it's a meeting  
24 between Sergeant Davis and Chief Prater.

25 Q. Who?

1           A.   Sergeant Davis and Chief Prater. I don't  
2 believe Mr. Malone was present.

3           Q.   Okay. And would this have been the  
4 follow-up meeting that you were suggesting to Davis  
5 and Duty and Malone that they follow up and meet  
6 with Prater?

7           A.   I would assume that it would be, due to the  
8 date on the letter.

9           Q.   Now, obviously, Mr. Malone is expressing  
10 his concerns that it was not a productive meeting  
11 that was held involving Chief Prater and David Davis  
12 and himself, Mr. Malone. And he mentions to you in  
13 his letter that they felt like there were threats  
14 and intimidation and -- you see where it says all of  
15 that?

16          A.   I do.

17          Q.   Did you take any follow-up action when you  
18 received this letter and the concerns expressed  
19 about it?

20          A.   I talked with Chief Prater about the  
21 letter.

22          Q.   What did you discuss with him?

23          A.   He expressed that he had talked with  
24 Mr. Davis about the request and basically that was  
25 it, to a degree. And by that, I mean we didn't go

1 indepth as to his answers.

2 Q. Mr. Malone indicates that the meeting that  
3 he had with the chief and, apparently, also  
4 Personnel Director Goodwin lasted only about 10  
5 minutes. Was that your understanding?

6 A. That's my understanding of his letter, yes.

7 Q. That was a lot less than the length of time  
8 that you met with him?

9 A. If the timing is right, it is less.

10 Q. Do you think that may be a bit brief to  
11 have a constructive meeting addressing issues and  
12 concerns?

13 A. Not being in the tone of the meeting, I  
14 wouldn't -- I wouldn't think it was enough time.  
15 But according to Mr. Malone's letter, I don't know  
16 that it may have been a good meeting. Appears to  
17 have been a bad meeting as I stated earlier.

18 Q. And did Chief Prater report back to you  
19 about the nature of the meeting he had on the  
20 subject?

21 A. As I stated earlier, it was my  
22 understanding it was not a good meeting.

23 Q. And that's what Prater reported back to  
24 you?

25 A. Basically, yes.